

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARIO H. CAPOGROSSO,

Plaintiff,

No. 18 Civ. 2710 (EK) (LB)

- against -

ALAN GELBSTEIN, *et al.*,

Defendants.

**DECLARATION OF JAMES M.
THOMPSON IN SUPPORT OF
THE STATE DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT**

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I, James M. Thompson, hereby declare as follows:

1. I am a member of the Bar of the State of New York and am admitted to practice in this District. I serve as an Assistant Attorney General in the office of Letitia James, the Attorney General of the State of New York. I represent Defendants Alan Gelbstein, Ida Traschen, and Danielle Calvo, in their individual capacities, and New York State Department of Motor Vehicles (“DMV”) Commissioner Mark J.F. Schroeder in his official capacity (collectively, the “State Defendants”), in this action.

2. I submit this Declaration in support of the State Defendants’ motion for summary judgment, filed contemporaneously herewith, for the limited purpose of putting before the Court certain documents referenced in the accompanying memorandum of law.

3. Unless otherwise stated, the facts and circumstances set forth in this declaration are based upon my own personal knowledge and my review of documents and information in the legal file relating to this action maintained by this Office in the regular course of business.

4. Attached as Exhibit 1 is a copy of the first part of Plaintiff Mario Capogrosso’s deposition transcript, and attached as Exhibit 2 is a copy of the second part of the transcript. Because the court reporter changed during a late-morning break, the Plaintiff’s deposition is

memorialized in two different transcripts even though it took place continuously over a single day. The two transcripts are paginated consecutively, and are referred to interchangeably here and in the accompanying memorandum of law as the “Capogrosso Tr.”

5. Attached as Exhibit 3 is a January 25, 2012 letter from the Plaintiff’s one-time counsel to the DMV threatening to file a lawsuit challenging the Plaintiff’s first Suspension due to aggressive, unprofessional, and violent conduct. The Plaintiff authenticated the document during his deposition. Capogrosso Tr. at 310:10-311:17.

6. Attached as Exhibit 4 is the Plaintiff’s Verified Article 78 Petition, dated March 1, 2012 from the Article 78 special proceeding (Index No. 7738/2012 (Sup. Ct. Kings Cty.)) that he commenced to challenge his Suspension (the “2012 Article 78 Proceeding”). The document is subject to judicial notice. See Ndremizara v. Swiss Re Am. Hldg. Corp., 93 F. Supp. 3d 301, 313 n.7 (S.D.N.Y. 2015) (“The Court may take judicial notice of pleadings filed in other cases”) (citing Rothman v. Gregor, 220 F.3d 81, 92 (2d Cir. 2000)).

7. Attached as Exhibit 5 is a report dated June 14, 2012 from Dr. John T. McCann, who oversaw the anger management course the Plaintiff took in connection with the settlement of the 2012 Article 78 Proceeding. The Plaintiff authenticated the document during his deposition. Capogrosso Tr. at 327:4-20.

8. Attached as Exhibit 6 is the Stipulation of Discontinuance resolving the Plaintiff’s 2012 Article 78 Proceeding, stamped by the Motion Support Office of the New York Supreme Court, Kings County on June 22, 2012. The document is subject to judicial notice. See Korenblum v. Citigroup, Inc., No. 15 Civ. 3383, 2015 WL 6001275, at *2 n.1 (S.D.N.Y. Oct. 14, 2015) (taking judicial notice of settlement agreement and citing other cases for the proposition that doing so is appropriate).

9. Attached as Exhibit 7 is a letter from the Plaintiff to Assistant Attorney General Elizabeth Prickett-Morgan, dated March 20, 2015, which is referred to in the accompanying memorandum of law as the “AG Letter.” The Plaintiff authenticated the document at his deposition. See Capogrosso Tr. at 408:2-18.

10. Attached as Exhibit 8 is the certified transcript of a March 16, 2021 telephone conference in this matter before Magistrate Judge Bloom, in which David Smart gave testimony under oath.

11. Attached as Exhibit 9 are the Plaintiff’s responses to the State Defendants’ interrogatories in this matter.

12. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
May 17, 2021


James M. Thompson